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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. [redacted]29

UNITED STATES OF AMERICA, *Appellant*

v.

THE CONCENTRATED PHOSPHATE EXPORT ASSOCIATION, INC., ET AL.

On Appeal From the United States District Court for the Southern District of New York

APPELLEES' MOTION TO AFFIRM OR DISMISS

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No. 1102

UNITED STATES OF AMERICA, *Appellant*

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On Appeal From the United States District Court for the Southern District of New York

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APPELLEES' MOTION TO AFFIRM OR DISMISS

Pursuant to rule 16 of the revised rules of this Court, appellees move that the Judgment of the district court be affirmed on the ground that the only question on which the decision of this cause depends is not substantial or of public importance and needs no further briefing or oral argument. In the alternative, appellees move under rule 16 to dismiss the appeal on the ground that an amended United States Government administrative regulation has ended the

activities complained of in this suit, and prevents their resumption, thereby mooting the question before this Court and rendering equitable relief unnecessary.

QUESTIONS PRESENTED

1. Was appellee Association's sale and shipment to a foreign country of goods financed under the government's foreign aid program, "export trade" within the meaning of the Webb-Pomerene Act?

2. Should this Court review the above question in the present case when appellee Association: (a) was organized and operated in a manner disclosed to and encouraged by the government; and (b) has been dissolved in consequence of amended AID regulations which now prevent the use of Webb-Pomerene associations for transactions which presently constitute substantially all AID-financed procurements of appellees' product?

STATEMENT

A. Background Facts

In 1961 the Concentrated Phosphate Export Association, Inc. (CPEA) was organized by five corporate producers of concentrated phosphate fertilizers to engage solely in "export trade" as defined in the Webb-Pomerene Act (15 U.S.C. 61-65) and was duly registered with the Federal Trade Commission (FTC) (Stip. 2).[1] CPEA acted as the export sales agency for

[1] "Stip." refers to the Stipulation of Facts in the district court, by paragraph number. "Stip. Ex." refers to Exhibits to the Fact Stipulation, by Exhibit number. CPEA's original members were: American Cyanamid Company, W. R. Grace & Company, Tennessee Corporation, International Minerals & Chemical Corporation and Virginia-Carolina Chemical Company (subsequently merged into Mobil Oil Corporation). (Stip. 3).

its members and, in its first five years, made sales to 39 foreign countries (Stip. 11, 13). Certain CPEA sales to Korea, financed with U.S. foreign aid funds, were challenged in this suit (Stip. 24). All of CPEA's sales to Korea were made in response to invitations to submit competitive bids to supply phosphatic materials for shipment directly to Korea (Stip. 33); all such material sold by CPEA was delivered directly from producing plants in Florida to Korea (J.S. 23; Stip. 26).[2]

Prior to and during the period covered by these sales Webb-Pomerene associations other than CPEA had sold under U.S. foreign aid programs, and an official publication of the Agency for International Development (AID) suggested formation of associations under the Webb-Pomerene Act as a method for United States companies to participate in AID-financed programs (J.S. 41; Stip. 29, Stip. Ex. 46). Not only the FTC, but officials of AID, which financed the transactions, officials of the Office of Supply, Republic of Korea (OSROK), which acted as the procurement agency for Korea on all but two of these transactions, and officials of the General Services Administration (GSA) which acted as the procuring agent for Korea on the two remaining transactions, were all fully aware of CPEA's status as a Webb-Pomerene association, and its membership (J.S. 41-42). Special reports showing the amount of CPEA's AID business were furnished to the FTC (J.S. 42).

In the court below the government charged only that CPEA's sales to Korea were not "export sales", and

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[2] "J.S." refers to appellant's Jurisdictional Statement, by page number. The opinion below will be cited as reported in the Jurisdictional Statement.

stipulated that it did not otherwise challenge the lawfulness of CPEA's operations (J.S. 24). The government also conceded that it made no claim that CPEA had overcharged or charged discriminatory or unreasonable prices in sales under foreign aid (T. 18, 32-33),[3] and withdrew the complaint request for dissolution of CPEA (J.S. 4). The government emphasized to the lower court that it sought only "prospective relief" (T. 73, 81).

The facts of the controversy were not disputed and the case was submitted to the lower court on a stipulated record (J.S. 23). The case was argued in March, 1967, and on September 11, 1967, the district court gave judgment for defendants and dismissed the complaint on its merits.

After the stipulated record had been submitted to the court below, AID amended its regulations to bar any financing after January 1, 1967, for transactions involving Webb-Pomerene associations, whenever U.S.-source procurement was required. 22 C.F.R. 201.01 (v); 201.52(a)(7); Appendix D; 31 Fed. Reg. 16693 (December 30, 1966).[4] The regulations require, *inter alia,* that with respect to transactions to which they apply, the supplier or producer of the commodity must

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[3] "T." refers to the Transcript of Oral Argument, by page number. See also J.S. 8, n. 5.

[4] The amendment of AID's regulations mentioned by appellant (J.S. 17, n. 12) and the additional facts recited above which took place after the matter was argued to the district court, were brought to the attention of the district court by joint action of the parties in the form of a proposed order vacating the court's September 11, 1967 Judgment and granting dismissal of the action. For procedural reasons, and since the Notice of Appeal had been filed, the parties did not press for adoption of the proposed order.

file a Certificate and Agreement Regarding Concerted Pricing (A.I.D. Form 285, Appendix A to the present Motion, p. 19, *infra*), certifying as follows:

> The price and quantity terms of the sale described by the attached invoice have been arrived at independently by the firm on whose behalf this Certificate is executed, without consultation or agreement concerning such price or quantity with any other bidder, offeror, competitor, or any member of an Export Trade Association (an Association within the meaning of 15 USC §§ 61-65), and without reliance upon any price established or recommended by any such Association.

The amended regulations apply to classes of transactions which presently constitute substantially all AID-financed procurements of phosphatic fertilizer.[5]

The corporate defendants, two of which resigned their membership in CPEA while the suit below was pending,[6] have all complied with this regulation. CPEA's remaining three members, forced by the regulation to work out their own individual company arrangements in export markets where AID financing was a possibility, found the usefulness and economy of CPEA's joint selling organization thereby ended. In June, 1967, before the lower court's decision was given, CPEA's members terminated CPEA's sales activities. On December 28, 1967, CPEA was formally dissolved.

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[5] AID does not report the proportion of procurement volume for which foreign companies are eligible suppliers. AID has disclosed that in Fiscal Year 1967, 98% of total AID expenditures for fertilizers were from U.S. sources (AID, Operations Report (FY 1967) p. 74).

[6] International Minerals & Chemical Corporation resigned on June 30, 1966; Mobil Oil Corporation resigned on March 15, 1967.

(The Certificate of Dissolution is attached as Appendix B to this Motion, p. 20, *infra*).

B. The Controlling Facts on the Merits

As noted above, this case involves the sale of phosphatic materials produced in Florida for shipment to and use in the Republic of Korea. In our view—and that of the district court—these facts qualified the transactions challenged by the government as "export trade" under the Webb-Pomerene Act (15 U.S.C. 61-65), and thereby exempted them from the antitrust laws. The other facts which were the subject of the stipulated record below become relevant only if the essential premise of the government's case is accepted —that is, if the plain meaning of "export trade" is abandoned. Accordingly, we will not undertake in this motion to correct all the omissions and inadvertencies in appellant's Jurisdictional Statement.

ARGUMENT

This appeal presents no substantial question warranting plenary consideration by this Court. Indeed, because of events which occurred after the matter was submitted to the district court, the appellees have discontinued doing any business as a Webb-Pomerene association and have dissolved CPEA, with the result that the government has now received more relief than it prayed for in the court below. In consequence, the issue initially presented in this case has become moot.

A. The Appeal Is Insubstantial

1. The Webb-Pomerene Act exempts from the antitrust laws "an association entered into for the sole purpose of engaging in export trade and actually en-

gaged solely in such export trade, or an agreement made or act done in the course of export trade by such association * * *". "Export trade" is defined in Section 1 of the Act to "mean solely trade or commerce in goods, wares, or merchandise exported, or in the course of being exported from the United States * * * to any foreign nation * * * ". The trade here involved is the sale of phosphates from Florida for use in the Republic of Korea, and plainly qualifies as "export trade" under this definition.

As the district court said:

> "To export" had at the time the Act was enacted the same meaning that it now has—"to carry or send abroad, especially to foreign countries." There is nothing to indicate that the Congress did not intend them to have this meaning; the Act itself refers to export as "goods exported from the United States to any foreign nation." On the face of the statute, the transactions were exempt from the antitrust laws.[1]

The government does not contend that any other meaning can be derived from "the face of the statute". Rather, it takes the district court to task for its supposed failure "to give full weight to the antitrust context in which the Act operates" (J.S. 9; *see also* J.S. 8). In this "context", according to the government, special rules of statutory construction operate: "Webb-Pomerene is an exception to the antitrust laws, and it is a familiar principle that such exceptions are narrowly construed, even where a literal reading of a statute might lead to a broader exemption." (J.S. 9)

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[1] J.S. 37, footnote omitted.

But "narrow" construction does not justify disregarding the plain meaning of statutory language. Appellant's own authorities do not suggest otherwise.[8]. In *Milk Producers Ass'n* v. *United States,* 362 U.S. 458, antitrust exemption was denied because the disputed transaction did not come within the terms of the statute; the case provides no warrant for denying an exemption where a transaction does comply with such terms.[9] To be sure, in *California* v. *Federal Power Comm'n,* 369 U.S. 482, and *United States* v. *Philadelphia National Bank,* 374 U.S. 321, this Court did emphasize that: "Immunity from the antitrust laws is not lightly implied", 369 U.S. at 485, followed in 374 U.S. at 348. But this is not the principle asserted by the government in this case; nor does it go far enough to accomplish the government's present purpose. Appellees do not ask that an exemption from the antitrust laws be "implied" in their behalf; we say that such exemption is expressly granted.[10] The "principle" which governs the present case, therefore, is that laid down in *McLean Trucking Co.* v. *United States,*

[8] It is instructive that although appellant asserts that its "principle" of construction is "accepted" and "familiar", no square authority is put forward in its support.

[9] The phase of the case adverted to here by the government dealt with the exemption from § 7 of the Clayton Act in favor of "transactions duly consummated pursuant to authority given by * * * the Secretary of Agriculture under any statutory provision vesting such power in such * * * Secretary". This Court rejected defendants' claim to come within this exemption because "there is no 'statutory provision' that vests power in the Secretary of Agriculture to approve a transaction * * * under the circumstances of this case". 362 U.S. at 469-470.

[10] *United States* v. *Philadelphia National Bank, supra,* at 350 n. 27.

321 U.S. 67, 79: "It is not for this Court, or any other to override a policy, or an exemption from one, so clearly and specifically declared by Congress, whatever may be our views of the wisdom of its action".

Since the Webb-Pomerene Act is subject to the same rules of construction as any other Act of Congress, its language, "particularly the central term—'export trade'" (J.S. 9) must be given full effect. This term clearly covers the challenged transactions, exempting them from the antitrust laws.

2. The legislative history of Webb-Pomerene, heavily relied on by appellant, does not enhance the substantiality of its appeal.[11] It is striking that appellant was unable to find a single statement in any document or debate which reflects an intention to give "export trade" any meaning other than the one which its words naturally connote and which was adopted as its definition in Section 1 of the Act itself. Nor has appellant uncovered a single remark suggesting that transactions which qualify under this definition would be excluded from coverage because of financing or other participation by the United States. Finally, appellant's argument that Congress, though loaning considerable sums of money to foreign nations in 1918 when Webb-Pomerene was passed, could not have foreseen "our modern-day foreign aid program" characterized by Korean-type "grants" (J.S. 12), is based on a fundamental misconception about foreign aid. It is true that the Korean procurements were financed by "grants";

[11] While the lower court did carefully review all of the government's arguments, its conclusion was "that the answer lies in the wording of the statute" (J.S. 22). "Much as plaintiff strains at the meaning of the words 'export trade', we are unable to find any ambiguity in them." (J.S. 37).

but the record also shows that U.S. foreign aid has been provided through *both* grants and loans (Stip. 22, 36), and as the court below noted, "Neither the tender nor award documents nor AID regulations make any distinction between the two forms of financing" (J.S. 35 n. 9). Actually, Korean-type "grants" have been the exceptional form of foreign aid, while loans, with which appellant concedes Congress in 1918 was familiar,[12] have been the more typical form of aid since at least 1961.[13]

Moreover, the affirmative indications from the legislative history to which appellant points, actually support coverage here. The objective of the Act "to enable American companies to compete effectively in international markets against foreign combines" (J.S. 9) was well served by appellee companies' ability to operate through the Association.[14] Appellant correctly

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[12] The government takes pains to minimize the significance of the references in the Webb-Pomerene debates to the "extensive loans which the American government was making to certain foreign countries because of the impact of World War I on the economies of those nations * * *". (J.S. 12). We deem these statements to be significant because they demonstrate an awareness that the proposed legislation might affect transactions financed by the public treasury. But we do not pause here to consider the strength of that inference, for our Motion to Affirm rests squarely on the language of the Act.

[13] AID, Operations Report (FY 1967) p. 68.

[14] CPEA's sales efforts for its members were wide-ranging; while this record details only those activities involving sales to Korea, the government stipulated that CPEA competed actively in free world export markets with foreign suppliers of concentrated phosphates, including producers with easy access to some of the world's major deposits of phosphate rock (Stip. 13; 40). The economies derived from CPEA's Korean activities are apparent from the record (Stip. 31-32; 34-36; 38).

points out that many Congressmen were concerned lest competition in domestic markets be adversely affected by the bill and therefore adopted the specific provisos discussed by the government (J.S. 13).[15] But the reasonable inference here is that Congress gave consideration to possible abuses of the exemption, and took action to guard against those which it feared.

3. The stipulated record deals largely with the nature of AID's participation in the challenged transaction. The government argues here that it was the "actual purchaser" (J.S. pp. 14-16). This is clearly wrong. The lower court's contrary finding was based wholly on the facts stipulated by the parties.[16] But the conflict need not be resolved. The court below did not rest its decision on its characterization of the transac-

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[15] The government concedes that appellees' activities were not prohibited by those provisos (J.S. 8 n.5; J.S. 24, 41; Stip. 12). Thus its argument that appellees have "restrained trade within the United States" (J.S. 14) is a rhetorical flourish which uses those words in a sense other than Congress used them in the Act.

[16] The government's concession, in the court below, that AID characterized itself as "essentially a financing institution" and that "AID did not itself procure any concentrated phosphates for Korea" (Stip. 21) is obviously at odds with its statement here that the "United States * * * is indisputably the purchaser of the goods procured and shipped abroad". (J.S. 16). The lower court's finding that "defendants were selling to the Korean Government" (J.S. 34) recognized that CPEA and other sellers conducted extensive commercial activities in Korea; most sales contracts were made there, most contract disputes were settled there, all material was shipped to Korea, and sellers were paid on orders from Korea. AID, as well as CPEA, Korean government agencies and other sellers regarded the Korean procurements as export transactions. (J.S. 28, 34; Stip. 31, 32, 34, 38; Stip. Exs. 18, 24-27). Significantly, most bidders on these Korean procurements regularly bid through export brokers. (Stip. Ex. 47).

tion; more significantly, the inquiry is not called for by the statute. The basic structure of the Act, and particularly the definitions of the key terms, make clear that the frame of reference for "export trade" was meant to be geographic: the location of the market where the goods are shipped and consumed. Under the government's argument, procurements financed by foreign aid might or might not be "export trade" depending on how antitrust officials (not AID, Korea or sellers) might evaluate a loan's repayment terms or a "counterpart" financial obligation, and regardless of whether the terms of foreign assistance were public information. The government's theory would thus introduce a new test of coverage, a test which has no cognizable nexus with the language of the statute, its structure, or its legislative history. If these sources of statutory meaning are henceforth to be disregarded in the interpretation of the Webb-Pomerene Act, exporters will avail themselves of the Act's benefits at the peril of the strict criminal and civil liabilities of the Sherman Act, with no frame of reference whatever to judge the legality of their conduct.

4. The government's case ultimately rests on the claim that it is unfair to subject AID programs to possibly higher prices due to elimination of competition among the members of a Webb-Pomerene association. In the court below, the government conceded that it made no claim that CPEA had charged non-competitive prices on AID-financed sales (T. 32-33, 17-18). On this record, therefore, the assertion that the AID program will suffer is without substance.[17] Such

[17] As the district court observed, AID officials have long known of the participation of Webb-Pomerene associations in AID procurement, and had ample authority to protect the program against

speculative considerations provide no basis for plenary review by this Court of an insubstantial question.

B. The Appeal Is Moot

For the reasons stated, the court below was clearly right in its interpretation of the Webb-Pomerene Act. Changed conditions, however, make this issue entirely academic with respect to these appellees. See Statement, p. 5, *supra*. Under established precedent, these changed circumstances have rendered the case moot; and they have certainly removed any need for equitable relief. The appeal should therefore be disposed of without reaching the merits. "Courts should avoid passing on questions of public law even short of constitutionality that are not immediately pressing." *Eccles* v. *Peoples Bank*, 333 U.S. 426, 432.

In *United States* v. *W. T. Grant Co.*, 345 U.S. 629, this Court enunciated the principles governing dismissal of suits for injunctions against antitrust violations, where the defendant has abandoned the allegedly illegal activities. Such voluntary cessation, the Court held, does not of itself make the case moot. But the Court continued: "The case may nevertheless be moot if the defendant can demonstrate that 'there is no reasonable expectation that the wrong will be repeated.' The burden is a heavy one." *Id.* at 633, quoting from

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unreasonable and uncompetitive prices (J.S. 41-42). Contrary to the government's claim of error (J.S. 16-17), the court did not thereby assert that the AID officials were empowered to "supplant the antitrust laws * * *". Rather, the court was rejecting the government's argument, based on claims of necessity, that the antitrust laws must be construed to protect the AID program. Of course, AID programs "are entitled to full protection under the antitrust laws" (J.S. 17); but they are also subject to the exemptions from those laws.

United States v. *Aluminum Co. of America,* 148 F.2d 416, 448.

We believe that the burden is met in this case. If there was a violation (which we deny), it was not willful. On the contrary, CPEA and its members acted with full disclosure to AID and the other government agencies, and when the AID regulation took effect, CPEA's remaining members stopped using CPEA for any sales under the AID program, and dissolved CPEA. Appellant points out that the amended AID regulations do "not in terms apply to the transactions involved here" (J.S. 17, n. 12), but even in their present form, the regulations have made it useless for CPEA to continue operations. Domestic-source procurements now account for substantially all AID-financed phosphate procurements, and, as a practical business matter, it is obviously uneconomical to maintain *both* individual corporate, and joint CPEA, export sales organizations. To be sure, AID could restore its earlier regulations and abandon its prohibition against Webb-Pomerene associations. But this *possibility* does not keep the present case alive. The fact is that appellees have stopped bidding through CPEA on AID-financed sales, and AID's regulation, adopted without the intervention of any court bars them from doing so in the future. In these circumstances dismissal of the action does not "grant defendants * * * a powerful weapon against public law enforcement" (345 U.S. at 632); it merely confines the court to its duty "to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it." *Mills* v. *Green,* 159 U.S. 651, 653.

It is significant that the two resignations and dissolution of CPEA were due not to the institution of the lawsuit, but to the intervening change in AID regulations and business considerations unrelated to this litigation (Statement, p. 5, *supra*). The decisions preserving the jurisdiction of the courts to enjoin future illegal conduct were distinguished on this basis in an early antitrust injunction suit, *United States* v. *Hamburg-American Co.*, 239 U.S. 466, 476-477. "But if the intervening event *is owing to the plaintiff's own act* or to a power beyond the control of either party, the court will stay its hand." *Id.* at 477, quoting from *Mills* v. *Green, supra,* 159 U.S. at 654 (emphasis supplied).

Whatever vitality this case retains for jurisdictional purposes, it is plain that the government does not need the relief sought in the complaint; and its complaint should be dismissed for that reason alone. In *W. T. Grant,* after holding that the case was not moot, the Court said (345 U.S. at 633):

> But the moving party must satisfy the court that relief is needed. The necessary determination is that there exists some cognizable danger of recurrent violation, something more than the mere possibility which serves to keep the case alive. The chancellor's decision is based on all the circumstances; his discretion is necessarily broad and a strong showing of abuse must be made to reverse it. To be considered are the bona fides of the expressed intent to comply, the effectiveness of the discontinuance and, in some cases, the character of the past violations.

In *Grant* this Court did not make an independent determination whether the announced standards had been met; its decision was based on approval of the

trial court's exercise of equitable discretion. But we doubt that a case could arise in which these standards point more strongly than here in favor of the defendants: we are confident that appellees' good faith will not be challenged. In *Grant* the government's claim that defendants had a proclivity for unlawful conduct was negatived "particularly since it is only recently that the Government has attempted systematic enforcement of § 8 [of the Clayton Act]", 345 U.S. at 634. The present case, of course, is one of first impression under the Webb-Pomerene Act, which is now in its fiftieth year. Appellees' claim that their conduct was lawful is, to say the least, entirely reasonable.[18] In actuality, the government secured the "prospective relief" it sought in the lower court when the AID regulation took effect. Appellant can hardly deny the "effectiveness" of the discontinuance, particularly since CPEA has been dissolved.

Finally, appellees acted in good faith in reliance on a plain statutory exemption and with full disclosure to the government agencies involved. In good faith they halted the challenged activities after vindication in the court below because of an intervening administrative ruling. In an antitrust suit, like any other, "the moving party must satisfy the court that relief is needed", *United States* v. *W. T. Grant Co., supra,* 345 U.S. at 633. There is simply no occasion for the intervention of a court of equity in this case.

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[18] The *Grant* case, of course, does not stand alone in holding that equitable relief may be denied where the defendant has voluntarily abandoned activities which the government sought to enjoin. See, *e.g., Hecht Co.* v. *Bowles,* 321 U.S. 321, 329; *Walling* v. *Youngerman-Reynolds Hardwood Co.,* 325 U.S. 419, 421; *United States* v. *Oregon Medical Society,* 343 U.S. 326, 334.

It is unnecessary to state precisely the difference between mootness and the lack of a basis for granting relief or issuing an injunction. Whichever rubric best fits the present appeal, the court should not set the case for argument. U.S. Sup. Ct. Rule 16 (1)(d).[19]

CONCLUSION

For the reasons set forth above, the judgment below should be affirmed, or this appeal dismissed.

Respectfully submitted,

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March 15, 1968

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[19] Under these circumstances, it would be appropriate for this Court to dismiss this appeal with directions to vacate the judgment below. This was the substance of the relief sought by the parties after the government had filed its Notice of Appeal (*supra*, n.4).

APPENDIX A

CERTIFICATE AND AGREEMENT REGARDING CONCERTED PRICING (A.I.D. Form 285)

In consideration of the receipt of funds made available by the United States under the Foreign Assistance Act of 1961, as amended, in payment, in whole or in part, of the sum indicated on the accompanying invoice as claimed to be due and owing, the undersigned, acting on behalf of the firm whose name appears on line 6 below (the supplier or the producer of the commodities) and authorized to bind such firm, agrees with and certifies to the Agency for International Development (A.I.D.) as follows:

(1) The firm whose name appears on line 6 below--

☐ (a) Is the A.I.D.-financed supplier, but is not the producer of the goods described by the goods described by the attached invoice which the supplier has executed.

☐ (b) Is the A.I.D.-financed supplier and is also the producer of the goods described by the attached invoice which the supplier has executed.

☐ (c) Is not the A.I.D.-financed supplier, but is the producer of the goods described by the attached invoice which the producer has executed.

[Check the appropriate box above]

(2) The price and quantity terms of the sale described by the attached invoice have been arrived at independently by the firm on whose behalf this Certificate is executed, without consultation or agreement concerning such price or quantity with any other bidder, offeror, competitor, or any member of an Export Trade Association (an Association within the meaning of 15 U.S.C. §§61-65), and without reliance upon any price established or recommended by any such Association.

(3) If the undersigned has checked box (1)(a) of this Certificate, he has also appended an invoice executed by the producer of the commodities described in the supplier's invoice and a Certificate and Agreement Regarding Concerted Pricing (A.I.D. Form 285) executed by the producer of such commodities.

(4) Invoice No. _____

(5) A.I.D. No. _____

(6) Name of firm _____

(7) Name of undersigned and position in firm _____

_____

(8) Signature _____ (9) Date: _____

INSTRUCTIONS: *"Firm" means the supplier or producer on whose behalf this Certificate and Agreement Regarding Concerted Pricing is executed. The supplier of the commodity shall execute this Certificate in every case in which he is required to do so as a condition for receiving payment. If the supplier indicates in box (1)(a) that he is not also the producer of the commodities (through manufacture, processing, mining, growth, or assembly), he shall attach to his invoice the invoice of the producer (covering the same commodities as described in the supplier's invoice) and an additional Certificate and Agreement Regarding Concerted Pricing (A.I.D. Form 285) executed by the producer of the commodities. On line 4, the supplier or the producer shall insert the serial number or other number which he has assigned to his invoice. On line 5 the supplier or the producer shall insert the A.I.D. implementation number which identifies the transaction.*

APPENDIX B

State of Delaware

Office of Secretary of State

Certificate of Dissolution

To All To Whom These Presents May Come, Greeting:

WHEREAS, It appears to my satisfaction by a duly authenticated certificate certifying that the dissolution of CONCENTRATED PHOSPHATE EXPORT ASSOCIATION, INC. a Delaware corporation whose principal office is located at The Prentice-Hall Corporation System, Inc., No. 229 South State Street of the City of Do has been authorized in accordance with the provisions of Section 275 of the General Corporation Law of Delaware, (Chapter 1, Title 8, Delaware Code), as amended, which certificate has been executed, sealed and acknowledged in accordance with the provisions of said Section 275,

Now, therefore, I, ELISHA C. DUKES Secretary of State of the State of Delaware, do hereby certify that the said corporation did on the twenty-eighth day of December, 1967, file in this office a Certificate of Dissolution, duly executed, sealed and acknowledged, which certificate is now on file in my office as provided by law.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, at Dover this twenty-eighth day of December, 1967

Elisha C. Dukes

Secretary of State

Assistant Secretary of State